

AUG 21 1991

District Counsel, San Jose  
ATTN: Steven A. Wilson

Chief, Branch 1 CC:IT&A

[REDACTED]

This is in response to your memorandum to Assistant Chief Counsel (Income Tax and Accounting), Chief, Branch 10 on August 2, 1991, and telephone conversations with Richard Ainsworth and Steven A. Wilson on August 20, 1991, regarding the above-entitled case. Based on the information you have provided, it is our position that the taxpayer was permitted to use the installment method during fiscal years [REDACTED] and [REDACTED] pursuant to section 7805(b) relief granted by Rev. Rul. 87-48, 1987-1 C.B. 145. This position is consistent with technical advice memoranda issued by the Service in 1990 and 1991.

This issue has been coordinated with Gerald Horan and Thomas Moffit of CC:TL. If you have any questions, please contact Robert Casey or Rochelle Pickard at FTS 566-3637.

08821

Internal Revenue Service  
**memorandum**

date: NOV 9 1990

to: District Counsel  
San Jose  
Attn: Christopher J. Croudace

from: Assistant Chief Counsel (Income Tax and Accounting)  
Chief, Branch 10

*J. P. [Signature]*

subject: [REDACTED]

We are responding to your memorandum dated October 31, 1990 which requested our views concerning how the government should answer the above-named taxpayer's petition for redetermination of deficiency filed in the Tax Court on [REDACTED] and how the government should frame its defense.

We are enclosing a copy of a Technical Advice Memorandum issued to the District Director, Portsmouth, NH. The technical advice involves facts substantially similar to the case at point. The technical advice concludes that Rev. Rul 87-48, 1987-1 C.B. 145 should be applied prospectively and cannot be applied to tax years beginning before 1987.

Although we recognize, as you are aware, that technical advice memorandums are not precedential, the rationale is applicable to situations that are similar. The rationale in this document will be applicable to situations that are similar. It appears that your situation is similar to that in the technical advice memorandum.

9085002

Index No.: 0453-1000  
Control No. TR-32-00086-89

MAY 15 1990

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

District Director

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification  
Years Involved:

No Conference Held.

may not be  
used as preced-  
ent in Section 6111 (1)(3)  
Internal Revenue

## ISSUE

Whether the taxpayer was properly using the installment method of accounting for sales income in taxable years ended February 28, 1986, and February 28, 1987.

## FACTS

The taxpayer is a corporation that manufactures, sells, and installs a certain type of equipment. The taxpayer's taxable year is from March 1 to February 28. Prior to the year ending February 28, 1986 (8602), the taxpayer reported income on the accrual method of accounting. Prior to December 22, 1985, the taxpayer's invoice terms were 100% of the amount billed due in 30 days, with a 1% discount if paid in full within 10 days. On December 22, 1985, the taxpayer changed the terms of sales to all customers to 90% payment of the total billed in 30 days and 10% in 40 days. The 1% discount for early payment was discontinued for all customers. Even after the change in payment terms, customers typically paid the entire amount due in a single payment. There were no charges for late payments under either the old or new invoicing methods.

For 8602, the taxpayer elected to report its income from the period December 22, 1985 to February 28, 1986 on the installment method. The taxpayer attached the required statement describing its installment plan to its return for that year, and filed a Schedule M adjustment for that portion of that year's income. The taxpayer reported sales for the entire year 8702 on the installment method.

- 2 -

Rev. Rul. 87-48, 1987-1 C.B. 145 was published on June 22, 1987. That ruling considered the Income Tax Regulations definitions of "installment sales plan." The facts regarding the payment terms of the taxpayer presented in the ruling were identical to the new terms offered by the taxpayer here. Under the authority of Internal Revenue Code (Code) section 7805(b), the ruling did not apply to tax years beginning before the date of publication of the ruling.

The 1987 Revenue Act, P.L. 100-203, repealed the installment method for dealers, effective for sales occurring after December 31, 1987. This change in applicable law occurred during the taxpayer's year 8802. Taxpayer changed its method of accounting and accounted for all sales during 8802 on the accrual method. Taxpayer reported the deferred income from the previously reported installment sales in that year. The taxpayer did not file a Form 3115 in connection with this change.

As a result of the examination of the taxpayer's returns for 8602 and 8702, adjustments have been proposed to disallow the taxpayers use of the installment method during those periods.

#### APPLICABLE LAW AND RATIONALE

Prior to the 1987 Revenue Act, Code section 453A provided rules for the use of the installment method by dealers in personal property. Under that Code section, persons who regularly sold or disposed of personal property on the installment plan could report income under the installment method. Section 10202(b) of the 1987 Revenue Act repealed the installment method for dealers in property. Section 10202(b) was made effective for installment obligations arising from dispositions after December 31, 1987, by subsection (e)(2).

Regulations section 1.453-2(b)(1) defines "sale on the installment plan" as "[a] sale of personal property by the taxpayer under any plan for the sale or other disposition of personal property which plan, by its terms and conditions, contemplates that each sale under the plan will be paid for in two or more payments . . . ." The alternative definition of "sale on the installment plan" is offered under Regulations section 1.453-2(b)(2), as:

[a] sale of personal property by the taxpayer under any plan for the sale or other disposition of personal property-

- (i) Which plan, by its terms and conditions, contemplates that such sale will be paid for in two or more payments, and
- (ii) Which sale is in fact paid for in two or more payments.

- 3 -

Regulations section 1.453-2(b) provides that either subsection (1) or (2) may satisfy the requirements for "sale on the installment plan."

Revenue Ruling 71-595, 1971-2 C.B. 223, considered the application of section 1.453-2(b) of the Regulations to a plan with credit terms providing for deferred multiple payments, but also providing a discount for early payment of the entire amount due. Based on the discount term, the revenue ruling concluded that the taxpayer did not contemplate the each sale would be paid for in installments and the provisions of section 1.453-2(b)(1) were not satisfied. However, based on section 1.453-2(b)(2), the ruling concluded that the taxpayer could report those payments actually received in installments on the installment plan.

W.T. Grant Co. v. Commissioner, 483 F.2d 1115 (2d. Cir. 1973), cert. denied, 416 U.S. 937 (1974), offered the following explanation of the Regulations section:

The primary distinction between §1.453-2(b)(1) and §1.453-2(b)(2) sales on installment plans focuses on this obligation of the taxpayer [to prove that gain on the sales is in fact received in installments]. Where there is a separate contract for each sale in which the parties contract for installment payments for the purchase of a particular item, the Commissioner will accept the provisions for periodic payments as establishing such payments. Where, however, the parties' contract covers a number of sales no specific intent is demonstrated as to any particular purchase; it is not unlikely then that while installment payments may be made on a great number of sales, some will be paid in single payments. As intent cannot be demonstrated specifically proof of actual multiple payments is required.

Id. at 1118. The court believed that if installment plans were evidenced by individual contracts for each sale, and each contract contained terms and conditions for multiple payments, then the Commissioner would presume a legitimate installment plan and allow use of the installment method of accounting for sales under the plan. According to the court, such plans satisfied the first alternative definition under Regulations section 1.453-2(b).

The Internal Revenue Service issued guidance on the interpretation of the section 453 regulations in June, 1987, in Rev. Rul. 87-48, 1987-1 C.B. 145, 146, which held that:

[I]f a dealer cannot reasonably expect that, in general, customers will pay for sales in two or more payments, the plan does not, by its terms and conditions, contemplate that each sale will be paid for in two or more payments. In such a case, the dealer will be permitted to report as sales on the installment plan only those sales that are in fact paid for

- 4 -

in two or more payments.

The ruling involved invoice terms of 90% due in 30 days, 10% due in 40 days, where approximately 50% of the sales were actually paid for in one payment. The ruling was not to be applied with retroactive effect, pursuant to the authority of Code section 7805(b).

The taxable years at issue here occurred before the effective date of Rev. Rul. 87-48. At that time, the only published guidance by the Service stated that the offering of discount terms along with installment payment terms did not contemplate that each sale would be paid in two installments.

The taxpayer here, as in the facts of Rev. Rul. 87-48, invoiced each customer offering terms of 90% payment in 30 days and 10% in 40 days. Customers typically paid in full in one payment. The taxpayer was improperly using the installment method of accounting based on the interpretation of Regulations section 1.453-2(b)(1) in Rev. Rul. 87-48.

#### CONCLUSIONS

Based solely on the prospective effective date of Rev. Rul. 87-48, the taxpayer will not be required to change its method of accounting for the years 8602 and 8702 from the installment method to the accrual method.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it is not to be used or cited as precedent.

- END -